

9-27-90

DEPARTMENT OF HEALTH SERVICES

James Perkins, Embalmer
License No. 1575
308 Dixwell Ave.
New Haven, CT 06511

Petition No. 880616-30-007

MEMORANDUM OF DECISIONPROCEDURAL BACKGROUND:

On October 18, 1989, the Connecticut Board of Examiners for Embalmers and Funeral Directors (hereinafter referred to as the Board) convened to hear the cases of James Perkins, Embalmer and the Perkins Funeral Home (The Memorandum of Decision of the case of the Perkins Funeral Home is a separate document and is captioned as Perkins Funeral Home, Inc., 308 Dixwell Ave., New Haven, CT 06511; Petition No. 880222-56-001, Inspection Certificate 326).

A Statement of Charges dated 7/24/89 was brought by the Department of Health Services (hereinafter referred to as the Department) against James Perkins (hereinafter referred to as the Respondent). It alleges in two counts violations of Connecticut General Statutes §20-227.

The Notice of Hearing dated 8/10/89 and the Statement of Charges were sent to the Respondent by Certified Mail - Return Receipt Requested. The hearing originally scheduled for 9/7/89 was continued at the request of the Respondent's counsel. A second continuance request was denied. (Tr. 10/18/89 p.3.) An answer to the Statement of Charges was filed.

Each member of the Board involved in this decision was present at the hearing, and this decision is based entirely on the evidence presented at that hearing.

The standard of proof required in this matter and applied in this decision is a preponderance of the evidence. In re: Polk, 90 N.J. 550, 449 A.2d 7 (1982); Sherman v. Commission on Licensure to Practice the Healing Art, District of Columbia Court of Appeals No. 12556, 407 A.2d 595 (1979).

This Memorandum of Decision sets forth the Board's findings of fact and conclusions of law. To the extent that findings of fact actually represent conclusions of law, they should be so considered and vice versa.

FINDINGS OF FACT:

After consideration of the entire record the findings of fact are the following:

1. James Perkins was at all times referenced in the Statement of Charges and during the hearing the holder of Connecticut Embalmer license number 1575. (See Dept. Ex. 4.)
2. The Respondent was provided the opportunity to attend an informal "compliance" conference. (Tr. 10/18/89 p.4.)
3. The Statement of Charges and Notice of Hearing were sent to the Respondent by Certified Mail - Return Receipt Requested. (Dept. Ex. 1.)
4. The hearing began and concluded on 10/18/89.
5. The Respondent was not present but was represented by counsel at the hearing.
6. At all times referenced in the Statement of Charges, the respondent was the principal stockholder of Perkins Funeral Home, Inc. (See Dept. Ex. 4.)

7. On or about April 6, 1984, Wilhelmina Perkins was either an agent of said home, was authorized to enter into contracts on behalf of said home or had apparent authority to enter into contracts on behalf of said home. (See Dept. Ex. 4.)
8. On or about April 6, 1984, Wilhelmina Perkins entered into a contract with Emily Tinney regarding the latter's funeral. (See Tr. 10/18/89 p. 6 and Dept. Ex. 7.)
9. On or about April 6, 1984 Emily Tinney made a payment of \$3,873.00 to Wilhelmina Perkins on behalf of Perkins Funeral Home, Inc. (See Dept. Ex. 7.)
10. Emily Tinney requested refunding of the above payment. (See Dept. Ex. 4.)
11. Employees or agents of Perkins Funeral Home, Inc:
 - 1) failed to make arrangements with Scott's Funeral Home of Richmond, Virginia; and
 - 2) failed to send a payment to Scott's Funeral Home of Richmond, Virginia. (See Dept. Ex. 4.)

12. The Respondent failed to timely refund the payment after being requested to do so (See Dept. Ex. 4.) and said failure was improper. (See Dept. Ex. 4.)
13. The Respondent accepted one or more checks from Ella Mae Shaw in payment of funeral services, which checks were in excess of the cost of said services, with the understanding that the remainder would be returned to her. (See Dept. Ex. 4.)
14. The Respondent did not timely return the remainder listed in 12. above, (See Dept. Ex. 4.), and he diverted the remainder, listed in 12. above, to his personal use. (See Dept. Ex. 6.)

DISCUSSION AND CONCLUSIONS OF LAW:

Connecticut General Statutes, Section 20-227 provides in pertinent part that:

The department of health services may refuse to grant a license or inspection certificate or the board may take any of the actions set forth in section 19a-17 against a licensee, registrant or holder of an inspection certificate if it finds the existence of any of the following grounds: ... (4) incompetency, negligence or misconduct in the carrying on of such business or profession....

1. James Perkins is a licensee and Perkins Funeral Home Inc. is the holder of an inspection certificate as cited in Connecticut General Statutes §20-227.
2. The Respondent was provided with the opportunity to demonstrate compliance with all lawful requirements for the retention of his license as required by Connecticut General Statutes §4-182(c).
3. Notice of the hearing was properly sent and sufficiently provided information as mandated by Connecticut General Statutes §4-177 and §4-182.
4. The hearing was held in accordance with Chapters 54 and 385 of the Connecticut General Statutes and Sections 19-2a-1 through 19-2a-30 of the Public Health Code. The Board heard testimony and received documentary evidence from both parties on each count in the complaint.

5. The answer filed complied with Section 19-2a-18 of the Public Health Code.
6. With regard to the FIRST COUNT the Board finds that the Respondent's failure to timely return payment to Ms. Emily Tinney was misconduct in violation of Connecticut General Statutes §20-227(4).
7. With regard to the SECOND COUNT, the Board finds that the Respondent's failure to timely return the money involved as well as his diversion of that money for his personal use was misconduct in violation of Connecticut General Statutes §20-227(4).

ORDER:

Pursuant to the authority vested in it by Connecticut General Statutes 19a-17, the Board in the case against James Perkins, Embalmer, Petition No. 880616-30-007, hereby orders the following:

- 1). For each count of the Statement of Charges the Respondent be assessed a civil penalty of one thousand

dollars (\$1,000.00) for a total due of two thousand dollars (\$2,000.00). Certified check or money order should be made payable to "Treasurer, State of Connecticut" and sent within 90 days to: Lynn Hurley, Public Health Hearing Office, Department of Health Services - 150 Washington Street, Hartford, CT 06106.

- 2). The License of the Respondent to practice as an embalmer be revoked.

Connecticut Board of Examiners for
Embalmers and Funeral Directors

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DATE

Paul E. Driscoll
by Paul E. Driscoll, Chairperson

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